

1 JUDGE O'CONNELL-DIAZ: -- if you want it on the
2 bench session for action by the 17th of May since
3 that's some date that -- projected construction date
4 and it's really hard for me to ignore the concerns
5 that the Village has asked the Commission to look
6 into. And I've read through everything here and I'm
7 familiar with the cases that you brought here. I
8 probably had most of them, and in those instances I
9 don't recall that there was intervening opposition,
10 so I think we have kind of a different situation in
11 this case.

12 MR. HANZLIK: That may be, but we will not get
13 this line up in time to serve Motorola if we cannot
14 at least put in the overhead portion and construct
15 the 34 KV line. May 17th is an absolute final date;
16 that is it. They will not begin occupying that
17 facility on July 5 when they are scheduled to obtain
18 their occupancy permit if we can't get started with
19 construction on May 17th.

20 As I said, we can argue here all we
21 want about -- we believe we have negotiated in good
22 faith with the Village. They will say we haven't

1 but there were, as I said, at least six meetings,
2 there were several telephone calls, several visits
3 to their board meetings providing all kinds of
4 information and it just never stopped. We had to
5 bring this matter to the Commission. Motorola
6 stands to lose millions of dollars if they do not
7 occupy this premises. We're doing everything we can
8 do under the law to provide service to them. We
9 waited as long as we could in terms of our
10 discussions with Palatine. We ran out of time. We
11 have to come to the Commission. That's what
12 8-406(e) is there for. That's why we're here today.

13 We'll continue to work with them but we
14 cannot pass a Commission bench session and not have
15 an order. There jobs at risk, there are contract
16 exposures here, and these are serious matters. They
17 don't just involve ComEd and Palatine.

18 MR. GOLDSTEIN: We go back to the same conundrum
19 and that is I think that the Commission has to look
20 at the motion for temporary certificate and
21 determine, obviously, whether an emergency exists
22 and whether the temporary certificate and the line

1 that will be brought onto Motorola's property will
2 be serving more than one customer. I think that's
3 where we're at also.

4 MR. HANZLIK: We do not agree that the act limits
5 8-406(e) relief to situations where only more than
6 one customer -- that wouldn't be a reasonable
7 reading of the statute. So I don't see any weight
8 there to that argument.

9 I've represented we will be serving
10 more customers ultimately and if the representation
11 of the ComEd people isn't sufficient, then we'll
12 explore that issue; but I don't think that's the
13 relevant issue here. We've done everything we can
14 do given the time period. If I had waited until the
15 16th of May to file this because we still hadn't
16 reached agreement with the Village, then where would
17 we be? We wouldn't have time to obtain a temporary
18 certificate.

19 As I say, we will take this line down.
20 If we cannot establish to the Commission's
21 satisfaction that we're entitled to a permanent
22 certificate, for whatever reasons, we'll take the

1 line down. We'll incur those costs. They will not
2 be rate-based costs. We take that risk just as
3 Illinois Power did in this order in 98-0856. That's
4 what the law provides. We know we're at risk in
5 that regard but it is worth taking that risk; it is
6 not worth having a major customer in Illinois
7 without service.

8 JUDGE O'CONNELL-DIAZ: Where exactly is this
9 line, the portion that has to go underground? What
10 type of terrain is that? Is that a commercial area?
11 Is it a forest preserve area? Where is that in
12 Palatine?

13 MR. ZIBART: Well, all of the line is in an IDOT
14 right of way. It's all in the state highway
15 right of way and that's where the existing lines are
16 as well.

17 JUDGE O'CONNELL-DIAZ: But help me out as to
18 where it is located. Is it a commercial area? Is
19 it --

20 MR. ZIBART: I believe it is primarily a
21 commercial area. The underground portion is as, I
22 guess, Hicks Road and Rand Road curve around onto

1 Lake Cook Road. There's some sort of tricky curves
2 there and in order to get around the corner, it's
3 undergrounded because if you had it on poles, the
4 wires would cross out of the IDOT right of way. So
5 to keep it all within the right of way, it's
6 underground going around the corner. But it is
7 really just that one area.

8 MR. GOLDSTEIN: I would suggest that the areas
9 around Hicks Road are residential in nature and that
10 Lake Cook Road, obviously, is a state road and
11 that's a different -- whole different situation.
12 But that's a major reason for having the line
13 buried.

14 JUDGE O'CONNELL-DIAZ: Let's just take a short
15 recess for ten minutes. I want to check something
16 in my office and I'll be right back.

17 (Whereupon, there was
18 a recess taken.)

19 JUDGE O'CONNELL-DIAZ: Let's go back on the
20 record.

21 Mr. Hanzlik, Mr. Zibart, other than the
22 affidavit, was there a direct testimony filed in

1 this case?

2 MR. ZIBART: No. The affidavits in support of
3 the motion is all we filed.

4 JUDGE O'CONNELL-DIAZ: What I'm going to do is
5 today we're going to take the company's portion of
6 the case and then I'm going to give the Village an
7 opportunity to come back May 8th and at that point
8 in time, I'm going to let the company put their case
9 on today. At that point in time I will allow --
10 have the same witnesses come back and the Village
11 may cross-examine those witnesses. They also may
12 present testimony in support of what their position
13 is.

14 I just feel that this matter has got
15 this sense of immediacy about it and I believe that
16 the Village has certain rights here that I think
17 need to be addressed and I do understand that this
18 is a request for a temporary certificate, but I
19 think that they have raised some issues that I would
20 like to see addressed in a more complete fashion
21 before any order is entered by the Commission and a
22 more complete record developed.

1 It does seem that there is a cost issue
2 here and that may be something that the parties in
3 this interim period may explore and come to
4 resolution to everyone's satisfaction. But at this
5 juncture, I think I would like to proceed, somewhat
6 unorthodoxly, but I think that this a little bit of
7 a different certificate case than we usually have.
8 And so given that, I will accord it a somewhat more
9 unusual treatment.

10 MR. HANZLIK: I might just --

11 MR. GOLDSTEIN: What is being let into the record
12 for purposes of the hearing today? The affidavits
13 of the three individuals from Commonwealth Edison
14 Company as if they had actually testified today?
15 I'm a little unsure as to that.

16 JUDGE O'CONNELL-DIAZ: Mr. Hanzlik, were you --
17 are they going to testify today or what?

18 MR. HANZLIK: No, I just want to go back to
19 8-406(e) and answer one question that the Examiner
20 raised because during the break I read it and I
21 think it's relevant to what we're doing here and
22 that is that 8-406(e) which is our temporary

1 certificate of authority provides without notice or
2 hearing the Commission can enter a temporary
3 certificate. And that is why you don't see
4 intervention, I believe, because I did review all
5 those orders. There was not intervention; there
6 weren't hearings. The Commission simply enters the
7 temporary certificate order based upon the motion
8 and the supporting affidavits.

9 We have the supporting affidavits we
10 believe are consistent with prior precedent. We've
11 submitted a case here under 8-406(e). That's not to
12 say we're not prepared to set a schedule and go
13 forward on our petition. Our petition for a
14 permanent certificate raises a whole host of
15 witnesses and cross-examination and discovery issues
16 and we're fully prepared to set a schedule and do
17 that.

18 But other than the affidavits that we
19 have submitted, we believe we've made a sufficient
20 showing under 8-406(e) to obtain a temporary
21 certificate. And we would ask if -- we would ask
22 that that be -- I think it's part of the record by

1 virtue of having been attached to our motion and
2 submitted with our petition. But if you would like
3 me to do anything further with respect to those
4 affidavits, I can but that would be the testimony of
5 the witnesses.

6 JUDGE O'CONNELL-DIAZ: In any of those dockets
7 that you cited in your earlier recitation of the
8 cases that the Commission has granted the temporary
9 certificate, was there a three-week time period from
10 the filing of the request for the temporary
11 certificate and the issuance of the Commission
12 ordering those?

13 MR. HANZLIK: Yes.

14 JUDGE O'CONNELL-DIAZ: And were there intervening
15 parties in those dockets?

16 MR. HANZLIK: No, and I looked particularly and
17 that was because it provided without notice or
18 hearing, the rule states, so you do not --

19 JUDGE O'CONNELL-DIAZ: Were those overhead lines
20 or underground?

21 MR. HANZLIK: They were installations of
22 facilities. One was an Illinois Power. I believe

1 it involved the installation of some CT, current
2 transformer, facilities. The others were to serve
3 particular customers. We're trying to serve
4 Motorola here to serve in particular; water company
5 customers. In other words, a treatment facility
6 that was needed.

7 We're prepared to continue to talk with
8 the Village. I don't know that that is relevant to
9 the decision that has to be made under 8-406(e), but
10 we certainly commit to doing that.

11 MR. GOLDSTEIN: Obviously, we feel likewise.

12 JUDGE O'CONNELL-DIAZ: Well, I think -- let's not
13 beat around the bush. If it's a cost issue, this
14 underground portion that's going to run through the
15 Village is going to, because of their ordinance,
16 will in the end be something that the Village of
17 Palatine residents will be paying for, correct?

18 MR. HANZLIK: If they order us or direct us to
19 install it underground, Rider 28 provides that the
20 customers in that municipality must pay for that;
21 that is correct.

22 JUDGE O'CONNELL-DIAZ: Right.

1 MR. GOLDSTEIN: That's another argument that
2 perhaps down the road in this case as to whether
3 Rider 28 is applicable to the Village. At this
4 point in time, we're not willing to concede to that.

5 MR. HANZLIK: And so that's precisely our point
6 here. We can continue to talk and we're going to
7 run into an impasse. Motorola, and counsel for
8 Motorola is here, has informed me that they face
9 substantial penalties and damages if they cannot go
10 into service. They're vacating other premises to
11 combine all their operations at this new facility.
12 It will employ 1400 people.

13 JUDGE O'CONNELL-DIAZ: Let's go off the record
14 for a second.

15 (Discussion off the record.)

16 JUDGE O'CONNELL-DIAZ: Pursuant to an
17 off-the-record discussion, it has been determined I
18 think mostly by the Hearing Examiner that there's
19 information that has been exchanged from the company
20 to the Village and that information needs to be
21 digested and there may be some further questions
22 that the Village may have and they would like to

1 direct those questions to the Commonwealth Edison
2 people in order to have a fuller understanding of
3 cost ramifications and the like with regard to this
4 temporary certificate matter.

5 It is my understanding that the Village
6 will endeavor to place this matter on their Village
7 agenda for the May 7th counsel meeting that they
8 will be having. That notice will go out by May 3rd.
9 If that is not case, if it for some reason does not
10 get on the agenda, please advise us of that.

11 To that end, the Commission would
12 encourage the parties to continue the discussions
13 that obviously have been ongoing. And with that in
14 mind, we would continue to matter to May 8th for a
15 hearing on the temporary certificate.

16 Additionally, counsel for the company
17 has requested to supplement the filing with
18 additional affidavits; is that correct?

19 MR. HANZLIK: I just want to reserve the
20 possibility of submitting one additional affidavit
21 and I would do so on May 4th; no later than May 4 to
22 get it directly to parties. It will be relatively

1 short, but I do want to just review what we've
2 submitted and determine if we need to supplement one
3 of the affidavits.

4 JUDGE O'CONNELL-DIAZ: And, additionally,
5 Mr. Goldstein has requested that he would bringing
6 in his witnesses on May 8th to testify with regard
7 to the issues that may or not be raised with regard
8 to the temporary certificate when we get to that May
9 8th date. So I would imagine that all parties to
10 this action will be busy up until that 2:00 o'clock
11 moment and either -- they'll either have resolved
12 the issues that I think we all see with regard to
13 this matter or not and we'll move forward on that
14 day.

15 MR. HANZLIK: In the event that one of our -- one
16 of the individuals who submitted an affidavit is out
17 of town, because he currently is. I do not know
18 whether he returns -- apparently he does not return
19 by the 8th.

20 JUDGE O'CONNELL-DIAZ: Who is that?

21 MR. HANZLIK: That's Mr. Franklin.

22 JUDGE O'CONNELL-DIAZ: And he testifies with

1 regard to?

2 MR. HANZLIK: Issues dealing with the Village and
3 Motorola.

4 JUDGE O'CONNELL-DIAZ: Is there someone else that
5 has --

6 MR. ZIBART: Yes.

7 MR. HANZLIK: Yes. I would attempt to determine
8 the appropriate other person or people and bring
9 them in and if the Examiner or parties had questions
10 of the matters stated in Mr. Franklin's affidavit.
11 So since he's not going to be here, I will make sure
12 that we have someone here who can cover the same
13 material.

14 JUDGE O'CONNELL-DIAZ: That would be fine.

15 MR. GOLDSTEIN: Fine.

16 JUDGE O'CONNELL-DIAZ: Anything else we need to
17 address on the record?

18 (No response.)

19 JUDGE O'CONNELL-DIAZ: Then this matter is now
20 continued to May 8th at 2:00 o'clock for hearing.

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(Whereupon, the above-entitled
matter was continued to
May 8, 2001 at 2:00 p.m.)

CERTIFICATE OF REPORTER

STATE OF ILLINOIS)

COUNTY OF COOK)

CASE NO. 01-0336

TITLE: Commonwealth Edison Company

I, Giraida B. Bordabeheres, do hereby certify

that I am a court reporter contracted by SULLIVAN

REPORTING COMPANY, of Chicago, Illinois; that I

reported in shorthand the evidence taken and the

proceedings had in the hearing on the above-entitled

case on the 1st day of May A.D. 2001; that the

foregoing 42 pages are a true and correct transcript

of my shorthand notes so taken as aforesaid, and

contains all the proceedings directed by the

Commission or other person authorized by it to

conduct the said hearing to be stenographically

reported.

Dated at Chicago, Illinois, this 7th day

of May A.D. 2001.


REPORTER